Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	

OPPOSITION TO JOINT MOTION FOR STAY PENDING JUDICIAL REVIEW

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SUMMARY

Cox Communications, Inc. ("Cox") urges the Commission to dismiss the Joint Motion for Stay Pending Judicial Review of the *First Report and Order* filed by GTE Corporation ("GTE") and Southern New England Telephone Company ("SNET"). A stay would put one of the most important proceedings in the history of telecommunications on hold and stymie the introduction of local competition in direct contravention of Congressional mandate as established by the Telecommunications Act of 1996 (the "1996 Act"). GTE and SNET must not be allowed to abuse Commission processes and delay realization of the important public interest objectives of the *First Report and Order* and the 1996 Act simply to advance their own private interest in perpetuating their local telephone monopolies. Indeed, the Joint Motion fails to satisfy any of the four elements necessary to justify grant of a stay request.

First, GTE and SNET utterly fail to make a strong and substantial showing of likelihood of success on the merits. The Joint Motion fallaciously claims that the Commission lacks authority under the 1996 Act to adopt national pricing and interconnection arbitration standards. The interconnection and arbitration provisions of Sections 251 and 252 of the 1996 Act, and preemption provisions of Section 253, vest the Commission with ample authority to establish national interconnection pricing standards and arbitration guidelines to govern both interstate *and* intrastate traffic.

GTE and SNET erroneously rely on new claims concerning their alleged embedded costs to justify grant of a stay. GTE and SNET fail to explain why the entire local competition docket should grind to a halt to allow them unilaterally to produce new evidence regarding cost recovery when they had ample opportunity properly to put this evidence into the record during the comment and *ex parte* periods in this proceeding.

Second, GTE and SNET's claim that they will suffer irreparable harm in the form of "lost bargaining opportunities" if they are not granted a stay is without merit. Parties are free to negotiate and enter into an interconnection agreement for whatever price they wish without regard to agency- and statutorily-established parameters. If an interconnection dispute should result in state arbitration, Section 252(e) preserves GTE's and SNET's ability to appeal erroneous state arbitration decisions.

Third and more important, grant of the stay will cause significant harm to other interested parties and potential LEC competitors. The delay necessarily associated with a stay and a judicial appeal will harm the introduction of local competition. In particular, grant of a stay would harm Cox in its state arbitrations with GTE and Bell Atlantic by eliminating crucial FCC guidelines that the Virginia State Corporation Commission and the California Public Utilities Commission otherwise would have to apply in their decisionmaking. Furthermore, if a stay is granted and the FCC's rules are nonetheless upheld on appeal, many parties seeking to negotiate interconnection agreements will be left in procedural "limbo" without hope of retroactive relief to compensate them for economic losses incurred during the pendency of the protracted stay and appellate process.

Fourth, grant of a stay would seriously harm the public interest. Congress has set August 8, 1996, as a date certain by which the Commission was to have established the national framework for the introduction of local competition consistent with the 1996 Act. This statutory deadline imposes a high public interest hurdle for GTE and SNET to overcome in order to justify the intolerable delay associated with grant of their stay request. The Joint Motion fails entirely to clear that hurdle.

TABLE OF CONTENTS

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Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its Opposition to the Joint Motion for Stay Pending Judicial Review ("Joint Motion") filed by GTE Corporation ("GTE") and Southern New England Telephone Company ("SNET") (collectively, "the Movants") in the above-captioned proceeding. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, First Report and Order (released August 8, 1996) ("*First Report and Order*").

I. INTRODUCTION

GTE and SNET in essence seek to forestall local exchange competition in direct contravention of statutory mandate by having the Commission defer the rules adopted in this historic proceeding. If successful, GTE and SNET would perpetuate their local telephone monopolies and foil Congress's express intent in passing the Telecommunications Act of 1996 (the "1996 Act") to open local exchange and exchange access markets to robust, facilities-based competition. The Commission must therefore deny the Joint Motion.

II. THE MOVANTS HAVE FAILED TO MAKE THE REQUIRED SHOWING TO JUSTIFY GRANT OF A STAY.

GTE and SNET's pleading fails to demonstrate any of the requisite elements justifying award of extraordinary equitable relief. A party moving for a stay must satisfy each of the following elements: (i) a strong and substantial showing of likelihood of success on the merits; (ii) irreparable harm in the absence of a stay; (iii) issuance of a stay will not harm other interested parties; and (iv) grant of a stay will serve the public interest. *See Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 924 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) ("*WMATC*"). The Commission must deny the instant motion because the Movants have failed to satisfy these required elements.

A. GTE and SNET Have Not Made a Strong and Substantial Showing That Their Proposed Petition for Review of the *First Report and Order* Is Likely to Succeed on the Merits.

The Commission must dismiss the Joint Motion because it utterly fails to make the "strong" and "substantial" showing of likelihood of success on the merits necessary to justify grant of a stay. *WMATC*, 559 F.2d at 843. The Movants claim that the Commission lacks authority under the 1996 Act to establish national pricing standards and local competition rules. Contrary to these unsupported allegations, the Commission has acted well within its jurisdictional authority and statutory mandate to adopt the national pricing guidelines designed to promote local competition. The Movants, therefore, have failed to show that they have even the slightest chance of success on the merits, much less made the strong and substantial showing required to justify grant of a stay.

1. The Commission Is Statutorily Authorized to Establish National Pricing and Interconnection Arbitration Standards.

The Movants' analysis of the Commission's statutory authority to set national standards is deficient because it fails to recognize the legal standard for reviewing an agency's interpretation of a statute. Joint Motion at 6-12. Indeed, the Joint Motion does not even mention *Chevron*, the case that established the framework for evaluating agency interpretations of their authorizing statutes.[1/] Under that framework, it is well settled that the Commission has the power to interpret a federal statute where it is the expert agency. Applying this standard, the provisions of Sections 251 and 252 of the 1996 Act vest the Commission with ample jurisdictional authority to adopt national rules to define the rights and obligations of carriers under the local competition and interconnection provisions of the 1996 Act. As the *First Report and Order* correctly concludes, the interconnection and arbitration provisions of Sections 251 and 252 in conjunction with authority vested in the Commission to preempt state regulation under Section 253 of the 1996 Act evidence Congress's establishment of a national policy framework for all interconnection.

Indeed, the Joint Motion is devoid of any showing that would contradict the Commission's interpretation of its authority. For instance, while GTE and SNET assert that the Commission's rulemaking authority under Section 251(d)(1) is limited only to "subjects

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1/ *See Chevron v. U.S.A., Inc. v. Nat'l Resources Defense Council*, 476 U.S. 837 (1984). ("*Chevron*"). *Chevron* establishes a two-level test for determining whether an agency's interpretation will be adopted by the courts. First, a court must look to the plain meaning of the statute. If the statute is ambiguous or unclear, however, the court is bound to accept the agency's interpretation unless that interpretation is unreasonable. *Chevron*, 476 U.S. at 843. Thus, for GTE and SNET to succeed on appeal, they must show either that the Commission has misread the plain meaning of Sections 251 and 252 or that the Commission's interpretation is unreasonable. They have done neither.

where it has been given authority" and does not include a grant of authority to establish pricing standards, there is no such limitation in Section 251. Joint Motion at 7. Rather, Congress instructed the Commission in Section 251(d) to adopt regulations "to implement the requirements of this section," not just a limited subset of specifically enumerated provisions. In fact, Section 251(d)(3)(C) gives the Commission broad power to define both the scope of "the requirements of this section and the purposes of this part." These "requirements" include implementing policies on LEC duties to establish reciprocal compensation, negotiation for interconnection and unbundled elements and resale. Specifically, the Commission is required to assure that interconnection and unbundled access are made available "on rates, terms and conditions that are just, reasonable, and nondiscriminatory . . . [in accordance with] the requirements of this section and section 252." *See* 47 U.S.C. §§ 251(c)(2)(D) and (c)(3).

GTE and SNET also claim that Section 2(b) of the 1934 Act, which limits Commission authority over intrastate services, prevents the Commission from establishing national pricing standards and local competition rules. Joint Motion at 9-12. It is impossible, however, to read Sections 251 and 252 to exclude "intrastate" pricing from the FCC's Section 251 jurisdiction over intercarrier interconnection. The FCC was specifically instructed by Congress to adopt rules implementing Section 251 including the provisions of Section 251(b)(5) and (c) concerning terms and conditions for LEC provided services. Section 252 requires States to conform their arbitrations to "the regulations prescribed by the Commission pursuant to Section 251." 47 U.S.C. § 252(c)(1). The pricing standards contained in Section 252(d), which the States are legally bound to apply in arbitrations, are

completely intertwined with Section 251. Because both Sections 252(d)(1) and (d)(2) specifically refer to Section 251, it is plain that the Commission and not the States must define pricing requirements for both interstate *and* intrastate interconnection in order to fulfill Commission obligations spelled out in Section 251.[2/] Additionally, Section 252(e)'s requirement that the Commission act where the states have failed to act in an arbitration proceeding by definition requires that the Commission have authority over "intrastate" interconnection.[3/]

Moreover, the 1996 Act contains an additional, broad grant of authority to the Commission in Section 253. Section 253 gives the Commission the power to preempt state or local requirements that prevent "any entity" from providing "any interstate *or intrastate* telecommunications service." 47 U.S.C. § 253(a)(2) (emphasis added). Even if the Commission's power over intrastate communications was not obvious from the provisions of Sections 251 and 252, Section 253 establishes that Congress plainly intended to change the old jurisdictional model through the 1996 Act. Consequently, the Movants' jurisdictional argument has no merit.

2/ In addition, the Commission has jurisdiction under Section 332 to regulate LEC-to-CMRS interconnection rates, consistent with Congress's removal of state jurisdiction by express amendment to except Section 332 from Section 2(b). *First Report and Order*, at ¶¶ 1022-6.

3/ 47 U.S.C. § 252(e). This analysis also demonstrates that GTE and SNET could not satisfy the "plain meaning" element of the *Chevron* test. In light of the explicit grants of authority to the Commission in Sections 251 and 252, the most the Movants can claim is that the interaction between Section 2(b) and Sections 251 and 252 is ambiguous. In that context, the Commission's reasonable interpretation prevails.

2. The Pricing and Interconnection Arbitration Standards Adopted in the First Report and Order Comport with APA Standards of Reasoned Decisionmaking and Due Process of Law.

GTE and SNET also allege that the Commission violated APA requirements of reasoned decisionmaking and due process in adopting national pricing standards. *See* Joint Motion at 12-24. In fact, the procedures followed by the Commission in adopting the TELRIC pricing standards and default proxies plainly satisfy these APA requirements. Thus the Movants have failed to make a strong and substantial showing of likelihood of success on the merits with respect to these claims.

GTE and SNET proffer new cost analyses to support their contention that the *First Report and Order*'s adoption of national pricing standards is arbitrary and capricious. *See* Joint Motion at Affidavit of Dennis B. Trimble. This "new evidence" does not meet the heavy burden the Movants must bear. Under the Supreme Court's *State Farm* decision, an agency rule is arbitrary and capricious if it:

> relie[s] on factors which Congress has not intended it to consider, entirely fail[s] to consider an important aspect of the problem, offer[s] an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.[4/]

The *First Report and Order* exhibits none of these elements of arbitrariness or capriciousness. First, the Commission adopted national pricing standards considering the interconnection, unbundling and local competition imperatives expressly mandated by Congress in the rulemaking provisions and statutory deadline set forth in Section 252(d)(1) of

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4/ *See Motor Vehicle Manufacturers Association of United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42, 103 S.Ct. 2856, 2866 (1983) ("*State Farm*").

the 1996 Act. Further, the Commission had a voluminous record that strongly supported adoption of national pricing guidelines.[5/] The setting of national pricing standards for local telecommunications competition is the hallmark of the Commission's expertise and an express purpose of the 1996 Act. Accordingly, the Commission's adoption of national pricing standards is entirely in accordance with APA requirements for reasoned decisionmaking and due process.

General equitable principles also prohibit GTE and SNET from relying on new cost studies to attack the reasonableness of the default proxies set by the Commission.[6/] GTE and SNET complain that the Commission's default proxies are based on a measure of costs that does not provide any contribution for joint and common costs. *See* Joint Motion at 20. The parties had ample opportunity to produce evidence demonstrating their costs through the notice-and-comment procedures and *ex parte* presentations. GTE and SNET both argued in rulemaking comments of their entitlement to contributions to joint and common costs. GTE and SNET chose to ignore those opportunities fully to disclose their actual costs or specifically explain their cost recovery concerns. It is unconscionable for them now to fault the Commission for adopting national pricing guidelines based on alleged cost evidence never introduced into the rulemaking record.

5/ *See, e.g., First Report and Order* at nn. 23-32.

6/ Under the clean hands doctrine, "equity will not grant relief to a party, who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in his prior conduct has violated conscience or good faith or other equitable principle." *Black's Law Dictionary*.

GTE and SNET's contention that it is confiscatory not to "allow LECs full recovery of their actual costs" (*see* Joint Motion at 16) misstates and misapplies the law of ratemaking. Rates are judged against a "zone of reasonableness" which is "bounded at one end by the investor interest against confiscation and at the other by the consumer interest against exorbitant rates" and the constitutionality of authorized rates is based on whether the financial integrity of the company as a whole is threatened.[7/] There never has been a requirement that a particular rate be compensatory, as is evidenced by LEC claims that some of their existing rates are below cost and subsidized by other rates. GTE and SNET have provided absolutely no evidence that the Commission's pricing rules, once applied, would threaten their financial integrity. Indeed, given that no state arbitrations have been completed, their takings claim is entirely theoretical. Moreover, the Movants' fundamental claim is not that the Commission has failed to identify their costs, but that the Commission is allocating these costs differently than the Movants would like. Accordingly, GTE and SNET's claimed guarantee to full recovery of costs does not make a strong or substantial showing of likelihood of success on the merits.[8/]

7/ *See Washington Gas Light v. Baker*, 188 F.2d 11, 15 (D.C. Cir. 1950), *cert. denied*, 340 U.S. 952 (1951); *FPC v. Hope Natural Gas*, 320 U.S. 591, 605 (1944). In addition, given that investor expectations are a significant element in the takings analysis, it is unreasonable for telephone companies to assert that they are entitled to recover embedded costs. As described in Cox's reply comments, almost every major LEC has written down its telephone plant on its financial books, signaling to investors that they should not expect to recover embedded costs. *See* Cox Communications, Inc. Reply Comments, filed in CC Docket No. 96-98, May 30, 1996, at 26 ("Cox Reply Comments").

8/ GTE and SNET have also failed to consider that the statutory pricing sheme for carrier-to-carrier local interconnection plainly is not the same pricing standard the FCC and States use to set end user customer rates.

B. GTE and SNET Have Failed to Demonstrate That They Will Be Irreparably Harmed Absent a Stay of the Interconnection Rules Established in the *First Report and Order*.

GTE and SNET have failed to demonstrate that, absent grant of a stay pending judicial review, they will be irreparably injured. GTE and SNET's claimed "lost bargaining opportunities" allegedly resulting from the Commission's default proxies and national arbitration standards under Sections 251 and 252, even if cognizable, do not rise to the level of irreparable harm. Joint Motion at 25-30. Nor do their unsupported allegations of lost revenue, customers and goodwill as a result of the Commission's Section 252 procedures support a finding of irreparable harm. Joint Motion at 30-35.

The Court of Appeals has held that "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough" to show irreparable harm. *Virginia Petroleum Jobbers*, 259 F.2d at 924. Rather, "the injury must be both certain and great; it must be actual and not theoretical." *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

In contrast, GTE and SNET's claims that the default proxies will unduly constrain negotiation of interconnection arrangements are purely speculative. Joint Motion at 25-6. Nor do the Movants demonstrate *any* relationship between the suspension of certain existing negotiations by potential LEC competitors and the implementation of the Commission's default proxies and negotiation and arbitration guidelines. Joint Motion at 26-7 (citing Affidavit of Donald W. McLeod at ¶ 9; Affidavit of Anne U. MacClintock at ¶ 22). In fact, the negotiations were suspended before the *First Report and Order* was adopted, let alone released. Even if there were some logical nexus demonstrated between the suspension of

prior interconnection negotiations and the rules adopted in the *First Report and Order*, GTE and SNET have failed to demonstrate that they would suffer injury that is "both certain and great."[9/]

GTE and SNET also have failed to show how the national pricing and arbitration guidelines established in the *First Report and Order* will result in lost revenue, customers or goodwill. They claim that the default proxies and arbitration rules will prevent them from recovering their costs. Joint Motion at 31-2 (citing Affidavit of Duane G. Johnson). In fact, under Section 252(a) parties are free voluntarily to negotiate and enter into whatever rates, terms and conditions of interconnection they wish without regard to the interconnection standards set forth in Sections 251(b) and (c) and the implementation and pricing rules adopted by the Commission. Thus, the statute preserves GTE's and SNET's opportunity to negotiate whatever price they deem appropriate to recover their network costs, and the FCC's rules do nothing to infringe upon this opportunity.[10/]

9/ *Virginia Petroleum Jobbers*, 259 F.2d at 924. In the *Deferral of PCS Licensing* proceeding, which is the only authority cited by the Movants in support of a stay, the Commission actually denied the stay request for failure to show irreparable harm. In particular, the Commission stated that:

> [The petitioners'] contention that subsequent PCS licensees will be fatally hamstrung in their ability to compete against A and B block licensees *is purely speculative*. Even if A and B block licensees obtain some benefit from being licensed before other PCS providers, we believe that numerous competitive opportunities remain open to subsequent PCS entrants.

See Deferral of Licensing of MTA Commercial Broadband PCS, 10 FCC Rcd 7780, 7781 (Wireless Tel. Bur. 1995), *aff'd on recon.*, 11 FCC Rcd 3214 (1995), *aff'd on appl. for review*, 61 Fed. Reg. 19623 (May 2, 1996) ("*Deferral of PCS Licensing*") (emphasis added).

10/ *See* Gerald W. Brock, Bargaining Incentives and Interconnection, Exhibit 3, to Cox Communications, Inc., Comments, filed in CC Docket No. 96-98, May 16, 1996.

GTE and SNET also fail to recognize that the structure of the Commission's pricing rules expressly permits the demonstration of actual costs in a state arbitration setting. Furthermore, Section 252(e) provides GTE and SNET with an opportunity for FCC and appellate review if they are unable to negotiate a price they desire and are dissatisfied with the outcome of a subsequent arbitration. 47 U.S.C. § 252(e).[11/] While GTE and SNET may be required to spend "money, time and energy" in these processes, that is not, as *Virginia Petroleum Jobbers* established, irreparably harmful. *Virginia Petroleum Jobbers*, 259 F.2d at 924.

GTE and SNET's claim that competitive pricing of unbundled network elements will enable competitors to "cream-skim" customers in "low cost, high margin urban areas" (Joint Motion at 34) and will result in a permanent loss of customers does not support a finding of irreparable harm.[12/] Loss of customers is an inevitable result of competition. Indeed, it

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11/ As the *Virginia Petroleum Jobbers* court stated, "[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." 259 F.2d at 924.

12/ Although the Movants rely on the example of AT&T's lost market share to MCI, the Commission rejected a similar "cream-skimming" argument made by AT&T as failing to state a cognizable competitive harm. The Commission dismissed AT&T's argument that allowing MCI to enter the long distance market would be injurious to incumbent carriers, stating,

> The Commission approved the applications because MCI is offering a type of communications service not available from the existing carriers and for which a public need has been demonstrated. In effect the carriers are arguing that a new service should not be authorized if it will result in a diversion of any business from existing carriers irrespective of the benefits to be derived by the public from a grant of the requested authorizations. [The Commission] requires no such guarantee against competition.

See MCI Communications, Inc., 21 F.C.C.2d 190, 194 (1970).

would be surprising and profoundly disappointing to the framers of the 1996 Act if competition failed to have any deleterious impact on GTE's and SNET's monopoly customer base.

Finally, GTE and SNET fail to make a strong and substantial showing connecting the *First Report and Order's* national pricing rules with the alleged "nonquantifiable damage to goodwill" they will supposedly suffer to support a finding of irreparable harm. *See* Joint Motion at 34-5.

C. Issuance of the Stay Will Harm Other Interested Parties and Potential LEC Competitors.

GTE and SNET have failed to show that grant of a stay will not harm other interested parties or adversely affect competition. Their claim that state arbitration of interconnection disputes would not be harmed by a stay of the Commission's national guidelines for arbitration flatly contradicts the statutory requirement that the Commission establish uniform national standards for interconnection and arbitration. Joint Motion at 36-7. Contrary to GTE and SNET's assertions, moreover, competitors will not necessarily receive retroactive relief to compensate for economic harm they would incur during the interim period if the requested stay of the *First Report and Order*'s arbitration and pricing rules is granted and the rules are ultimately upheld on appeal. Joint Motion at 37-8.

GTE and SNET ignore the serious harm to competition that the delay associated with deferral of the effectiveness of the rules would cause. Grant of a stay would be particularly injurious to Congress's intent in passing the 1996 Act "to *accelerate rapidly* private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." S. Conf. Rep. No.

104-230, 104th Cong., 2d Sess. 1 (1996) ("Conference Report") (emphasis added). Forestalling competition in the local exchange market, contrary to of Congressional intent, would be particularly inequitable in light of the remote and speculative nature of the harm GTE and SNET claim they will suffer in the absence of a stay.

GTE and SNET's assertion that "[a]rbitrations . . . are explicitly entrusted to the states . . . , and there is no reason to think that state commissions will be unable to fulfill the role Congress assigned them without detailed national standards fixed by the Commission" is simply wrong. *See* Joint Motion at 36-7. Section 251(d) requires that the Commission establish national standards for the states to follow in arbitrating interconnection disputes. Staying the effectiveness of these rules, therefore, will prevent the timely availability to negotiating parties of arbitration remedies governed by Commission-established standards, as expressly required by Section 251 and 252 of the Act.[13/]

GTE and SNET also erroneously claim that no harm will come to parties if a stay is granted and the rules are ultimately upheld on appeal because parties may retroactively conform existing agreements to the rules. Joint Motion at 37-8. Retroactive interim relief will not necessarily be available to all parties under GTE and SNET's scenario to compensate

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13/ The duty to negotiate in good faith is a critical part of the negotiation and arbitration process. Congress expressly mandated as part of the rulemaking established by Section 251(d) that the Commission establish standards to govern this duty, which is contained in Section 251(c)(1) of the 1996 Act. As the Commission correctly concludes, moreover, "Congress specifically contemplated that one or more of the parties may fail to negotiate in good faith, and created at least one remedy in . . . [t]he possibility of arbitration itself." *First Report and Order* at ¶ 149.

for economic harm incurred during the pendency of a stay and appeal process.[14/] In fact, it is likely that negotiated agreements reached during a stay would be unaffected if the rules were upheld because the 1996 Act does not require negotiated agreements to conform to Section 251.

In addition, to the extent that applying the rules will harm GTE and SNET, staying the rules will harm new entrants. As the Commission recognized in the *First Report and Order*, national rules are necessary to curb the excessive bargaining power of incumbent LECs in interconnection negotiations, and without those rules new entrants will be at a significant disadvantage. *First Report and Order* at ¶ 55.

Cox specifically will be harmed by a stay. As a certificated carrier in California and Virginia, where Cox expects to compete with GTE, it is crucial for Cox to obtain interconnection and transport and termination on reasonable terms.[15/] A stay could greatly harm Cox in Virginia and California, where it has requested arbitration in its negotiations with GTE and Bell Atlantic and where a stay would eliminate crucial FCC guidelines that the Virginia State Corporation Commission and the California Public Utilities Commission otherwise would have to apply in their decisionmaking.

14/ *See, e.g., Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies*, 6 FCC Rcd 4827 (Com. Car. Bur. 1991) (denying motion for stay where it would "harm the public interest because cellular licensees engaged in discriminatory practices against resellers arguably could continue those practices, in contravention" of Commission requirements), *aff'd on recon.*, 7 FCC Rcd 4006 (1992), *see also Cellnet Communication, Inc. v. FCC*, 965 F.2d 1106 (D.C. Cir. 1992).

15/ Cox also has significant interests in SNET's territory in Connecticut, and expects to seek interconnection with SNET in the future.

D. Granting a Stay Will Not Serve the Public Interest.

GTE and SNET have failed to demonstrate that grant of a stay is in the public interest. Their contention that "the system for creating local competition under the [1996] Act can go forward as Congress envisioned whether or not the Commission's regulations are in place" (Joint Motion at 39) is contrary to the public interest objectives expressly established by Congress in adopting the 1996 Act.

It is axiomatic that an expert agency has express authority to determine what is in the public interest "when Congress has charged [that agency] with administering [its governing statute] in the public interest." *Virginia Petroleum Jobbers*, 259 F.2d at 926. Section 251(d) of the 1996 Act expressly charges the Commission with administering the interconnection and local competition provisions set forth in Sections 251 and 252 of the Act. Section 151 of the 1934 Act, moreover, delegates authority to the Commission to administer the provisions of the 1934 Act to secure and protect the public interest. 47 U.S.C. § 151; *WOKO, Inc. v. FCC*, 109 F.2d 665 (D.C. Cir. 1940). Furthermore, Congress set August 8, 1996 as the date certain by which the Commission was to promulgate rules to advance the interconnection and local competition objectives of Sections 251 and 252 of the Act.

Grant of the requested stay would harm the public interest by delaying the Commission's public interest objectives in adopting the *First Report and Order* as required by Congress. As the Commission correctly observes, adopting

> initial rules designed to . . . open[] the local exchange and exchange access markets to competition . . . will enable the states and the Commission to begin to implement sections 251 and 252. Given the dynamic nature of telecommunications technology and markets, it will be necessary over time to review proactively and adjust these rules to ensure both that the statute's

> mandate of competition is effectuated and enforced, and that regulatory burdens are lifted as soon as competition eliminates the need for them.

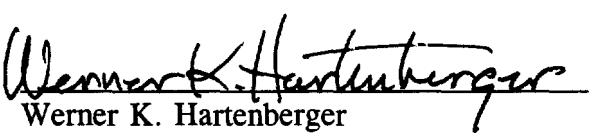
First Report and Order, at ¶ 6. Grant of a stay will be fatal to the Commission's Congressionally mandated duty to meet these time-sensitive public interest objectives.[16/]

III. CONCLUSION

For all these reasons, Cox Communications, Inc. respectfully requests that the Commission deny the Joint Motion of GTE and SNET for Stay Pending Judicial Review.

Respectfully submitted,

COX COMMUNICATIONS, INC.



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16/ Similarly, the Commission has rejected a request to stay the broadband PCS auctions as contrary to the public interest where:

> Congress has mandated that the Commission promote the development and rapid deployment of PCS for the benefit of the public with a minimum of administrative or judicial delay.[] Prompt licensing of the A and B blocks furthers this Congressional mandate by speeding the introduction of services that will compete with cellular and other established mobile services.

See Deferral of PCS Licensing, 10 FCC Rcd at 7780.

CERTIFICATE OF SERVICE

I, Tracie R. Ivey, a secretary at Dow, Lohnes & Albertson, do hereby certify that on this 4th day of September, 1996, a copy of the foregoing "Opposition of Cox Communications, Inc. To Joint Motion for Stay Pending Judicial Review" was sent via first-class mail, postage prepaid, to the following:

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